

RECORDING REQUESTED BY
TUNTEX PROPERTIES INC.(U.S.A.)

WHEN RECORDED MAIL TO

NAME Department of Toxic Substances
Control

MAILING 700 Heinz, Suite 200

CITY, STATE Berkeley, California
ZIP CODE 94710-2737

San Francisco Co Recorder's Office
Gregory Joseph Diaz, County Recorder
DOC - 95-F900195-00
Check Number 2664

RECD BY

Friday, DEC 15, 1995 10:28:30

REC \$20.00/PAG \$16.00/MIC \$1.00

STP \$15.00!

Ttl Pd \$52.00

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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S
USE

TITLE(S)

COVENANT AND AGREEMENT TO RESTRICT USE OF PROPERTY
BAYSHORE RAILYARD NORTH AREA ONE
GROUNDWATER EXTRACTION AND TREATMENT SYSTEM
SAN FRANCISCO, CALIFORNIA

COVENANT OF DEED RESTRICTION

Recording Requested By:

Tuntex (U.S.A.) Inc.

When Recorded, Mail To:

Department of Toxic Substances Control
Region 2700 Heinz Avenue, Suite 200
Berkeley, California 94710-2737
Attention: Barbara Cook, Chief
Site Mitigation BranchCOVENANT AND AGREEMENT
TO RESTRICT USE OF PROPERTYBayshore Railyard North Area
Area One
Groundwater Extraction and Treatment System
San Francisco, California

This Covenant and Agreement ("Covenant") is made on the 25
day of September, 1995 by and between Tuntex (U.S.A.) Inc.
("Covenantor") and the Department of Toxic Substances Control (the
Department). Covenantor is the owner of record of certain property
situated in the City and County of San Francisco, State of
California, as legally described in Exhibit "A" attached hereto and
incorporated herein by this reference, and as shown in the map as
Exhibit "B" attached hereto and incorporated herein by this
reference (the "Property").

An extraction and treatment system, as shown in the diagram as
Exhibit "C" attached hereto and incorporated herein by this

1 reference, has been installed on the Property to protect against
2 potential harm to persons or property from hazardous substances
3 which have been discovered in the groundwater. Covenantor and the
4 Department desire and intend that in order to protect the present
5 and future public health and safety, the Property shall be used in
6 such a manner as to avoid damage to, or interference with, the
7 extraction and treatment system.

8 ARTICLE I

9 GENERAL PROVISIONS

10 1.01 Provisions to Run with the Land. This Covenant sets
11 forth protective provisions and conditions (collectively referred
12 to as "Restrictions"), upon and subject to which the Property shall
13 be improved, held, used, occupied, leased, sold, hypothecated,
14 encumbered, and/or conveyed. Each and all of the Restrictions
15 shall run with the land, and pass with the Property, and shall
16 apply to, inure to the benefit of, and bind the respective
17 successors in interest thereof. Each and all of the Restrictions
18 are imposed upon that specific portion of the Property as legally
19 described in Exhibit A and as shown on the map in Exhibit B. Each
20 and all of the Restrictions are imposed pursuant to Health and
21 Safety Code Sections 25355.5 and 25356.1, and run with the land
22 pursuant to Health and Safety Code Section 25355.5. Each and all
23 of the Restrictions are for the benefit of and enforceable by the
24 Department.
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1.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

1.03 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

ARTICLE II

DEFINITIONS

2.01 Department. "Department" shall mean the California State Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regrading, and paved parking areas, constructed or placed upon any portion of the Property.

2.03 Occupant(s). "Occupant(s)" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.04 Owner(s). "Owner(s)" shall mean the Covenantor or its

1 successors in interest, including heirs, and assigns, who hold
2 title to all or any portion of the Property.

3 2.05 Director. "Director" shall mean the Director of the
4 California Department of Toxic Substances Control or his or her
5 designee.

6 ARTICLE III

7 DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

8 3.01 Restrictions on Development and Use. Covenantor promises
9 to restrict the use of the Property described in said Exhibit A as
10 follows:

11 a. No drilling for water for drinking or irrigation purposes
12 shall be permitted on the Property.

13 b. No raising of food (cattle, food crops, cotton, etc.)
14 shall be permitted on the Property.

15 c. No grading, excavation or construction that would
16 adversely affect the operation and maintenance of the
17 extraction wells and treatment plant or of the underground
18 piping, underground wiring, or underground utilities supplying
19 them, or that would impact groundwater shall, be permitted on
20 the Property. The Department shall be notified prior to any
21 earth moving activities that would impact the extraction and
22 treatment system.

23 d. Any contaminated soils brought to the surface by grading,
24 excavation, trenching or backfilling shall be managed in
25 accordance with all applicable provisions of state and federal
26

1 law.

2 e. All uses and development of the property shall preserve
3 the integrity of the groundwater extraction and treatment
4 system installed on the Property pursuant to the requirements
5 of the Department and the San Francisco Bay Regional- Water
6 Quality Control Board (RWQCB).

7 f. Any proposed alteration of the extraction and treatment
8 system shall require written approval by the Department and
9 the RWQCB.

10 g. The Owner(s) shall monitor the extraction and treatment
11 system regularly to insure the integrity of the system as
12 required in the Operations and Maintenance Agreement and the
13 NPDES permit issued by the RWQCB.

14 h. The Owner(s) shall notify the Department of each of the
15 following: 1) The type, cause, location and date of any
16 disturbance to the extraction and treatment system which could
17 affect the ability of the system to extract hazardous
18 substances from the groundwater and 2) The type and date of
19 repair of such disturbance. Notification to the Department
20 shall be made by registered mail within ten (10) working days
21 of both the discovery of system disturbance and the completion
22 of repairs.

23 i. The Owner grants the Department and other government
24 agencies an easement to the Property for inspection,
25 surveillance, monitoring, maintenance, and other purposes as
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1 deemed necessary by the Department in order to protect the
2 public health and safety.

3 3.02 Conveyance of Property. The Owner(s) shall take all
4 reasonable steps to provide at least seven (7) days advance notice
5 to the Department of any sale, lease, or other conveyance of the
6 Property or an interest in the Property to a third person. The
7 Department shall not, by reason of the Covenant, have authority to
8 approve, disapprove, or otherwise affect any sale, lease, or other
9 conveyance of the Property.

10 3.03 Enforcement. Failure of the Owner(s) to comply with any
11 of the requirements, as set forth in paragraph 3.01 shall be
12 grounds for the Department, by reason of the Covenant, to require
13 that the Owner(s) modify or remove any Improvements constructed in
14 violation of that paragraph. Violation of the Covenant shall be
15 grounds for the Department to file civil and criminal actions
16 against the Owner(s) as provided by law.

17 3.04 Notice to Buyers, Lessess, and Renters. Prior to sale,
18 lease or rental of the Property, Owner(s) shall give written notice
19 to buyers, lessees, and renters stating that there is residual
20 groundwater contamination as specified in Health and Safety Code
21 Section 25359.7(a).
22

23 ARTICLE IV

24 VARIANCE AND TERMINATION

25 4.01 Variance. Any Owner(s) or, with the Owner(s)' consent,
26 any Occupant of the Property or any portion thereof may apply to
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1 the Department for a written variance from the provisions of this
2 Covenant. Such application shall be made in accordance with
3 Section 25233, Health & Safety Code.

4 4.02 Termination. Any Owner(s) or, with the Owner's(s')
5 consent, any Occupant of the Property or a portion thereof may
6 apply to the Department to terminate this deed restriction as to
7 all or any portion of the Property. Such application
8 shall be made in accordance with Section 25234, Health & Safety
9 Code.

10 4.03 Term. Unless terminated in accordance with paragraph
11 4.02 above, by law or otherwise, this Covenant shall continue in
12 effect in perpetuity.
13

14 ARTICLE V

15 MISCELLANEOUS

16 5.01 No dedication Intended. Nothing set forth herein shall
17 be construed to be a gift or dedication, or offer of a gift or
18 dedication, of the Property or any portion thereof to the general
19 public or for any purposes whatsoever.

20 5.02 Notices. Whenever any person gives or serves any notice,
21 demand, or other communication with respect to this Covenant, each
22 such notice, demand, or other communication shall be in writing and
23 shall be deemed effective 1) when delivered, if personally
24 delivered to the person being served or to an officer of a
25 corporate party being served or an official of a government agency
26 being served, or 2) three (3) business days after deposit in the
27

mail if mailed by United States mail, postage paid certified,
return receipt requested:

To: "Covenantor"
Tuntex Properties, Inc. (Brisbane)
150 Executive Park Boulevard #4200
San Francisco, California 94134
Attn: General Manager

Copy to: Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attn: Chief, Site Mitigation Branch

Copy to: SF Bay - Regional Water Quality Control Board
2101 Webster Street
Oakland, California 94610
Attn: Project Manager

5.03 Partial Invalidity. If any portion of the Restrictions
or terms set forth herein or is determined to be invalid for any
reason, the remaining portion shall remain in full force and effect
as if such portion had not been included herein.

5.04 Article Headings. Headings at the beginning of each
numbered article of this Covenant are solely for the convenience of
the parties and are not a part of the Covenant.

5.05 Recordation. This instrument shall be executed by the
Covenantor and by the Site Mitigation Branch Chief, California
Department of Toxic Substances Control. This instrument shall be
recorded by the Covenantor in the County of San Mateo within ten
(10) days of the date of execution.

1 IN WITNESS WHEREOF, the parties execute this Covenant as of the
2 date set forth above.

3 OWNER: Tantex (U.S.A.), Inc.

4 By: CLL

5 Title: General Manager

6 Date: 9/13/95

7
8 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

9 By: Barbara J Cook

10 Barbara Cook

11 Chief, Site Mitigation Branch, Region 2

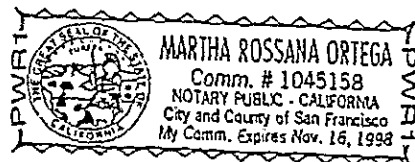
12 Date: 9/25/95

1
2 STATE OF CALIFORNIA)

3 COUNTY OF San Francisco)

4
5 On this 13th day of September, in the year 1995,
6 before me Martha Rossana Ortega, a Notary Public in
7 and for said state, personally appeared Kirk Li
8 personally known to me or proved to me on the basis of satisfactory
9 evidence to be the person whose name is subscribed to the within
10 instrument and acknowledged to me that he executed the same in his
11 authorized capacity, and that by his signature on the instrument
12 he, or the entity upon behalf of which he acted, executed the
13 instrument.
14

15
16 WITNESS my hand and official seal.



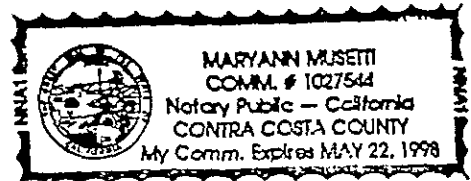
17
18
19 Signature Martha Rossana Ortega
20
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1 STATE OF CALIFORNIA)
 2)
 3)

4 COUNTY OF ~~Alameda~~
 5 Contra Costa

6 On this 25th day of September, in the year 1995,
 7 before me MaryAnn Musetti, a Notary Public in
 8 and for said state, personally appeared Barbara J. Cook,
 9 ~~personally known to me or~~ proved to me on the basis of satisfactory
 10 evidence to be the person whose name is subscribed to the within
 11 instrument and acknowledged to me that she executed the same in her
 12 authorized capacity, and that by her signature on the instrument
 13 the person, or the entity upon behalf of which the person acted,
 14 executed the instrument.

15 WITNESS my hand and official seal.



16
 17
 18 Signature *[Handwritten Signature]*
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F900195

EXHIBIT A

Job No. 95957

LEGAL DESCRIPTION OF PROPOSED DEED RESTRICTION
AREA 1

All that certain real property situate in the City and County of San Francisco, being a portion of Lot No. 8 and a portion of the parcel of land contiguous to and southwesterly of "Sunnydale Avenue", all as shown upon the Parcel Map recorded in Book 16 of Parcel Maps at page 40, Official Records of said City and County, being more particularly described as follows;

Beginning at a point on the southerly boundary line of said Lot No. 8, which line is common with the northerly boundary line of the County of San Mateo, said point is distant on said line N.89°51'18"E., 502.24 feet from the most southerly angle point in said southerly boundary line;

Thence along said line S.89°51'18"W., 502.24 feet to said southerly angle point;

Thence continuing along said northerly boundary line S.89°51'18"W., 142.76 feet;

Thence leaving said line N.0°10'30"W., 50.72 feet to a point in the southwesterly right of way line of "Sunnydale Avenue" as shown on said map;

Thence along said line S.70°35'22"E., 31.14 feet to the most southerly angle point in said right of way line, which point is common with an angle point in the general westerly boundary line of said Lot No. 8;

Thence along said line N.19°24'38"E., 66.00 feet;

Thence continuing along said line S.70°35'22"E., 25.004 feet;

Thence continuing along said line along a curve to the left, having a radius of 95.00 feet, through a central angle of 42°13'05", for an arc length of 70.00 feet;

Thence continuing along said line N.67°11'33"E., 37.02 feet;

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Thence leaving said line N.89°49'30"E., 42.41 feet;

Thence N.63°16'09"E., 433.40 feet;

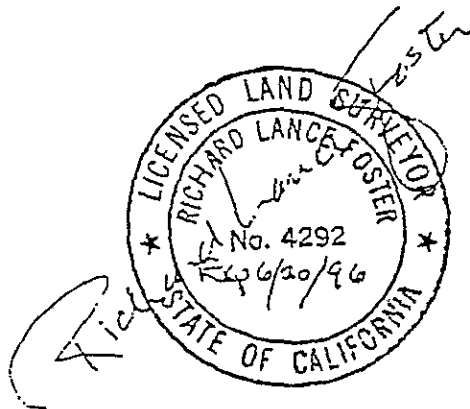
Thence N.0°10'30"W., 80.00 feet;

Thence N.89°49'30"E., 100.00 feet;

Thence S.13°00'00"W., 275.00 feet;

Thence S.0°10'30"E., 116.48 feet to the Point of Beginning.

Comprising 2.814 acres, more or less.



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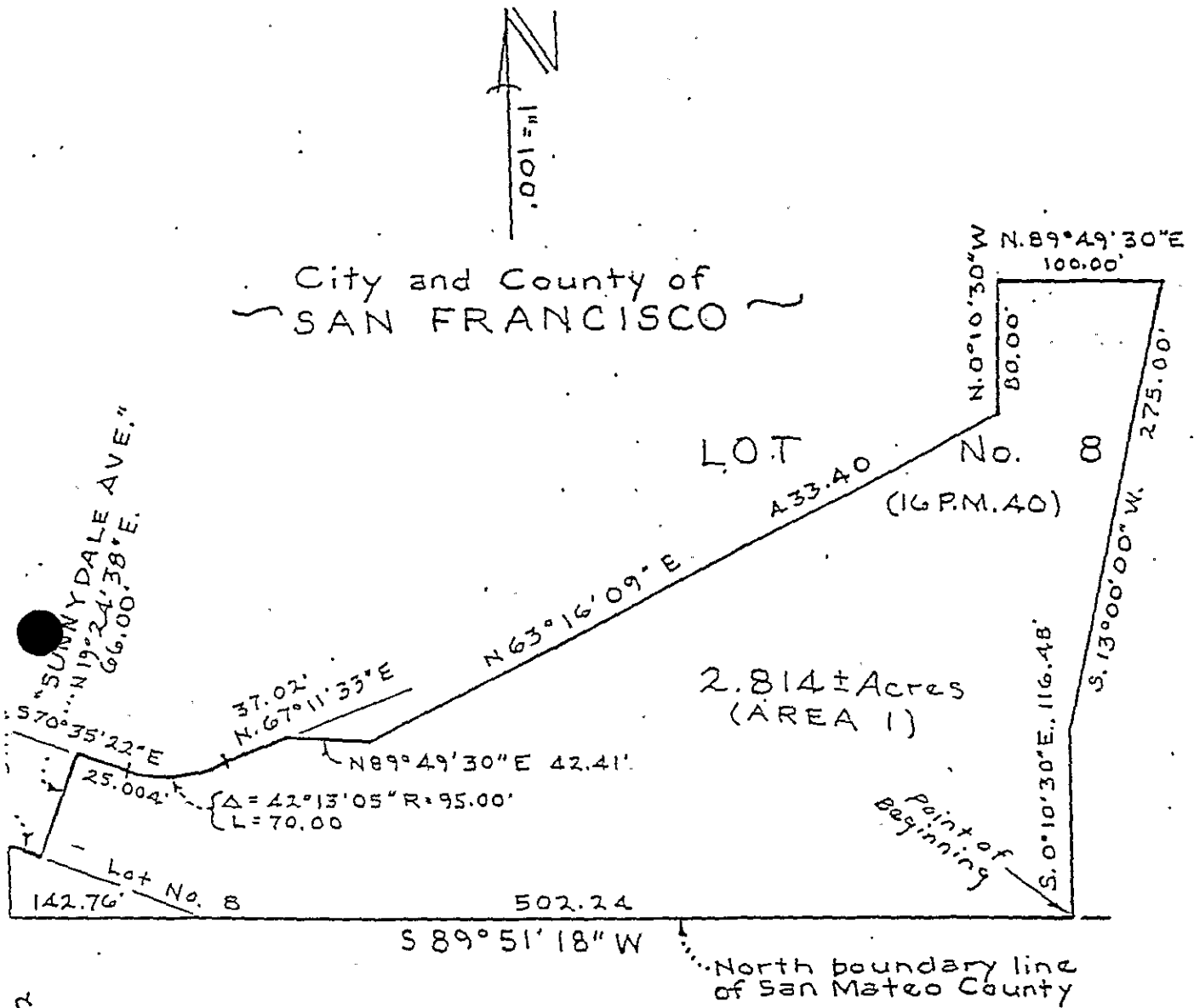


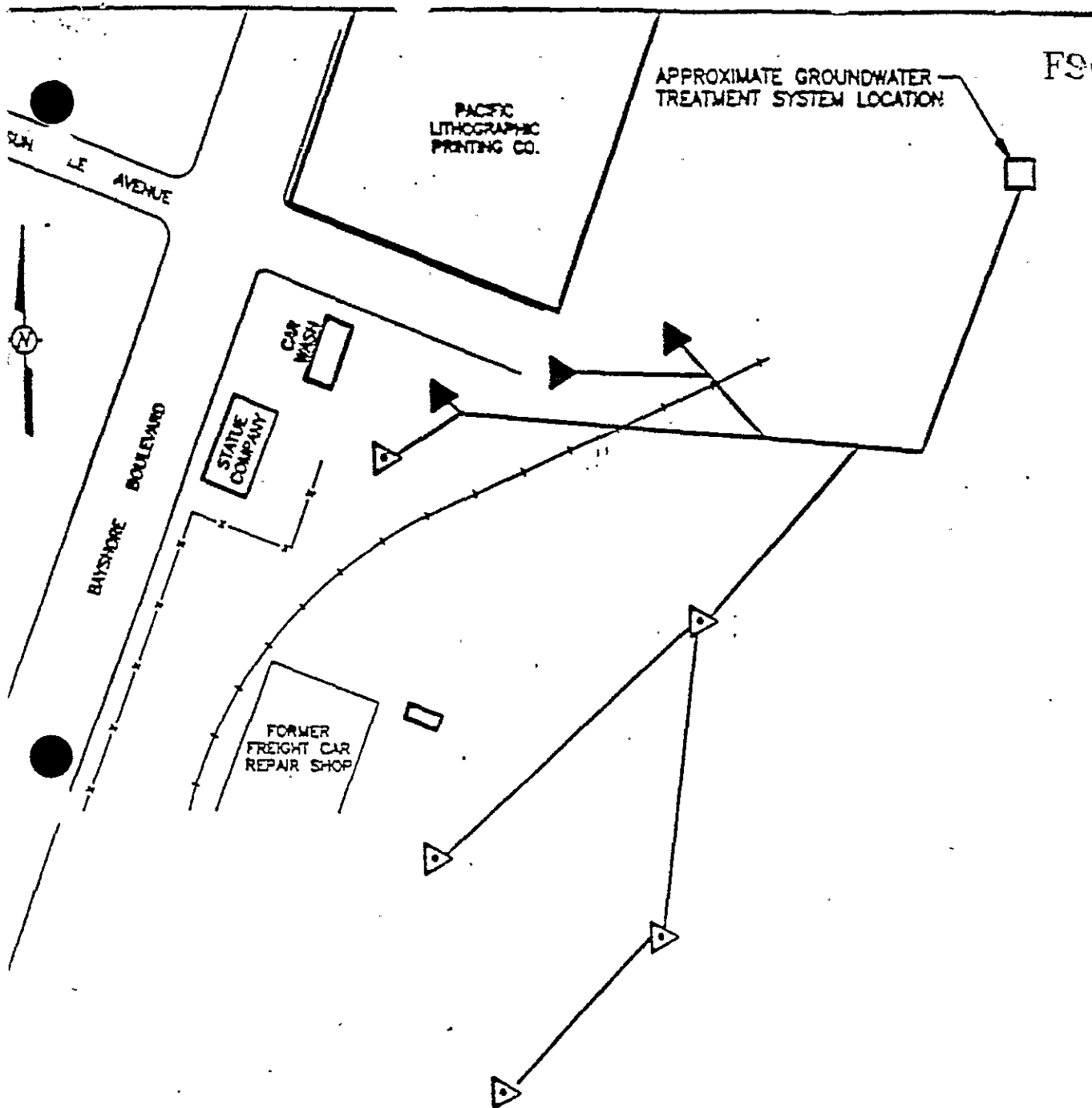
EXHIBIT B





1388 Bordeaux Drive
Sunnyvale, CA 94089
Tel: (408) 734-2245
Fax: (408) 734-5530

PLAT
TO ACCOMPANY
Legal Description

FS00195



LEGEND

-  APPROXIMATE A-ZONE SAND EXTRACTION WELL LOCATION
-  APPROXIMATE A-ZONE FILL EXTRACTION WELL LOCATION

SCALE

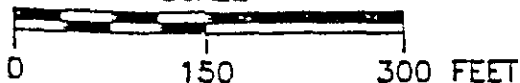


EXHIBIT C

GROUNDWATER TREATMENT
SYSTEM PLOT PLAN
PREPARED FOR
TUNTEX PROPERTIES, INC.
SAN FRANCISCO, CALIFORNIA



INTERNATIONAL
TECHNOLOGY
CORPORATION